

Amendment No. 1 to HB3637

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AMEND Senate Bill No. 3280*

House Bill No. 3637

by deleting all language following the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 10-7-503, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a)

(1) As used in this part and title 8, chapter 4, part 6, "public record or records" or "state record or records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

(2)

(A) All state, county and municipal records shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

(B) The custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure. In the event it is not practicable for the record to be promptly available for inspection, the custodian shall within seven (7) business days:

(i) Make such information available to the requestor;

(ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or

(iii) Furnish the requestor a completed records request response form developed by the office of open records counsel stating the time reasonably necessary to produce such record or information.

(C)

(i) Until the office of open records counsel develops a schedule of reasonable charges in accordance with § 8-4-604(a), a records custodian may require a requester to pay the custodian's actual costs incurred in producing the requested material; provided that no charge shall accrue for the first five (5) hours incurred by the records custodian in producing the requested material. Such actual costs shall include but not be limited to:

(a) The making of extracts, copies, photographs or photostats; and

(b) The hourly wage of employee(s) reasonably necessary to produce the requested information; provided, however, the time reasonably necessary to produce such requested information exceeds one (1) hour.

(ii) Following the development of the schedule of reasonable charges by the office of open records counsel, the office of open records counsel shall notify the Tennessee code commission and when the code commission receives such notice this subdivision (C) shall no longer apply and shall be repealed and deleted by the code commission as volumes are replaced or supplements are published.

(D) A records custodian shall notify an elected or appointed public official in office on the date a request is made for public records which name or pertain

to such public official. Such notification shall not be required for requests for public records where the public official is named purely in a ministerial or custodial capacity. The notification may be made by mail, telephone, electronic mail, personal notification or in any other manner deemed appropriate by the records custodian.

(E) A records custodian shall notify any employee of the governmental entity to which the request is made, who is named in the public records request, unless the employee is named purely in a ministerial or custodial capacity, and unless the request is made by a law enforcement officer or agency in relation to a criminal investigation involving the employee. The notification shall be made in a reasonable manner and within a reasonable period of time and in accordance with the policy adopted by the office of open records counsel in accordance with § 8-4-604(a).

(3) Failure to respond to the request as described in subdivision (a)(2) shall constitute a denial and the person making the request shall have the right to bring an action as provided in § 10-7-505.

(4) This section shall not be construed as requiring a governmental entity or public official to sort through files to compile information; however a person requesting such information shall be allowed to inspect the non-exempt records.

(5) This section shall not be construed as requiring a governmental entity or public official to create a record that does not exist; however the redaction of confidential information from a public record or electronic database shall not constitute a new record.

(6) A governmental entity is prohibited from avoiding its disclosure obligations by contractually delegating its responsibility to a private entity.

(7)

(A) A records custodian may not require a written request or assess a charge to view a public record unless otherwise required by law. However a records custodian may require a request for copies of public records to be in

writing or on a form developed by the office of open records counsel, and may require the citizen making the request for copies of or to view any public record to present a photo identification issued by a governmental entity which includes the person's address, if the person possesses a photo identification. If a person does not possess a photo identification, the records custodian may require other forms of identification acceptable to the records custodian.

(B) Any request for inspection or copying of a public record shall be sufficiently detailed to enable the records custodian to identify the specific records to be located or copied.

(C) The records custodian shall provide a requestor an estimate of reasonable costs to provide such copies.

SECTION 2. Tennessee Code Annotated, Section 10-7-505(b), is amended by adding the language "or circuit court" immediately after the language "chancery court" in the first sentence.

SECTION 3. Tennessee Code Annotated, Section 10-7-505(b), is further amended by adding the language "or circuit court" after the language "chancery court every time it appears in the second sentence.

SECTION 4. Tennessee Code Annotated, Section 10-7-505(g), is amended by adding the following language at the end of the subsection:

In determining whether the action was willful the court may consider any guidance provided to the records custodian by the office of open records counsel as created in title 8, chapter 4.

SECTION 5. Tennessee Code Annotated, Title 8, Chapter 44, Part 1, is amended by adding the following as a new section thereto:

§ 8-44-109.

(a) The municipal technical advisory service (MTAS) for municipalities and the county technical assistance service (CTAS) for counties, in order to provide guidance and direction, shall develop a program for educating their respective public officials

about the open meetings laws codified in this chapter, and how to remain in compliance with such laws.

(b) The Tennessee School Board Association shall develop a program for educating elected school board members about the open meetings laws and how to remain in compliance with such laws.

(c) The utility management review board shall develop a program for board members of water, wastewater and gas authorities created by private act or under the general law and of utility districts in order to educate such board members about the open meetings laws and how to remain in compliance with such laws.

(d) The state emergency communications board created by § 7-86-302 shall develop a program for educating emergency communications district board members about the open meetings laws and how to remain in compliance with such laws.

(e) The office of open records counsel established in title 8, chapter 4, shall establish educational programs and materials regarding open meetings laws in Tennessee, to be made available to the public and to public officials.

SECTION 6. Tennessee Code Annotated, Title 8, Chapter 4, is amended by adding the following sections as a new part thereto:

8-4-601.

(a) There is created the office of open records counsel to answer questions and provide information to public officials and the public regarding public records. The role of such office shall also include collecting data on open meetings law inquiries and problems and providing educational outreach on the open records laws codified in title 10, chapter 7, and the open meetings laws codified in title 8, chapter 44.

(b) The office of open records counsel shall answer questions and issue informal advisory opinions as expeditiously as possible to any person including local government officials, members of the public and the media. State officials shall continue to consult with the office of the attorney general and reporter for such opinions. Any opinion issued by the office of open records counsel shall be posted on the office's web site.

(c) The office of open records counsel is hereby authorized to informally mediate and assist with the resolution of issues concerning the open records laws codified in title 10, chapter 7.

8-4-602.

(a) There is created an advisory committee on open government to provide guidance and advice for the office of open records counsel.

(b)

(1) The advisory committee shall consist of six (6) members to be appointed for a term of four (4) years; provided that the three (3) members listed in subdivisions (b)(1)(A)-(C) shall be appointed for an initial term of four (4) years and the three (3) members listed in subdivisions (b)(1)(D)-(F) shall be appointed for an initial term of two (2) years. The advisory committee shall be made up of one (1) member from each of the following groups who will be appointed by the comptroller from a list of three (3) nominees submitted from each group:

(A) One (1) member from the Tennessee Coalition for Open Government;

(B) One (1) member from the Tennessee Press Association;

(C) One (1) member from the Tennessee Municipal League;

(D) One (1) member from either the Tennessee County Services Association or the County Officials Association of Tennessee;

(E) One (1) member from the Tennessee School Boards Association; and

(F) One (1) member from Common Cause or from the League of Women Voters.

(2) The advisory committee shall also consist of the chairs of the house and senate state and local government committees and the attorney general or the attorney general's designee.

(c) The non-legislative members shall not receive compensation for serving on the committee but shall be reimbursed for attendance at meetings in accordance with the comprehensive travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general.

8-4-603.

(a) The advisory committee, with the guidance and assistance of the office of open records counsel, may review and provide written comments on any proposed legislation regarding the open meetings laws codified in title 8, chapter 44, and the open records laws codified in title 10, chapter 7.

(b) The office of open records counsel and the advisory committee shall provide a report to the general assembly and to the governor by March 1 of each year.

8-4-604.

(a) The office of open records counsel shall establish:

(1) A schedule of reasonable charges which a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to title 10, chapter 7, part 5. In establishing such a schedule, the office of open records counsel shall consider such factors as the size, by population, of the county or municipality; the complexity of the request; the number of man hours involved in retrieving the documents, redacting confidential information from the documents, and any other costs involved in preparing the documents for duplication; the costs of duplication; the costs of mailing such documents if the requester is not returning to retrieve the requested documents; and any other costs which the office of open records counsel deems appropriate to include in such charge. The schedule shall be revised at least annually.

(2) A separate policy related to reasonable charges which a records custodian may charge for frequent and multiple requests for public records.

(3) A safe harbor policy for a records custodian who adheres to such policies and guidelines established by the office of open records counsel.

(4) A policy which a records custodian may follow to provide reasonable notification to employees who are the subjects of public records requests in accordance with § 10-7-503 (a)(2)(E). The goal of such policy shall be to provide guidance to the records custodian concerning the most economical means which a records custodian could utilize to provide notice to the employees.

(b) The office of open records counsel shall make such policies and guidelines available on the Internet.

(c) Such policies and guidelines shall not be deemed to be rules under the provisions of title 4, chapter 5.

SECTION 7. This act shall take effect July 1, 2008, the public welfare requiring it.